Supreme Court, U.S.
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(3)

No. 97-1785

In The
Supreme Court of the United States

October Term 1997

In the Matter of SHMUEL B. KLEIN,
an attorney and counselor-at-law

SHMUEL B. KLEIN,
Petitioner,
-against-

GRIEVANCE COMMITTEE FOR THE
NINTH JUDICIAL DISTRICT,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

Petitioner's Reply to Brief in Opposition for a Writ of Certiorari

Shmuel B. Klein, Petitioner, pro se
268 West Route 59
Spring Valley, NY 10977
914-425-2682

Counsel, pro se for Petitioner

30 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

(1) Whether an attorney disciplinary charge may be based upon a court order found to violate due process?

(2) Whether an attorney disciplinary charge may be based upon an order which violated the free exercise clause of the United States Constitution?

(3) Whether a 5 year suspension from the practice of law is violative of equal protection?

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PRELIMINARY STATEMENT

This Reply Brief is submitted to reply to those new issues alleged in the opposition to my petition for writ of certiorari to an order of the Court of Appeals of the State of New York, dated December 22, 1997.

REASONS TO GRANT THE WRIT

No attorney disciplinary charge can be based upon orders that violate due process, the First Amendment and Equal Protection.

The Respondent has included an order which was not the basis of my suspension from the practice of law for five years, written almost a year after the suspension. It was never part of the original record. Petitioner objects to the new order being included as part of the appendix.

Notwithstanding the objection, the new order (Bernstein #2) underscores the necessity of granting this petition for Writ of Certiorari. The new order reduced the amount of the sanction to five hundred dollars ($500.00). The new order back-handedly notes that I continue to practice in Bankruptcy Court and Federal Court, as allowed by the Rules of the Southern District of New York, Rule 2, without any sanctions. The new order has been appealed and, as was the fact in Bernstein Order #1, Bernstein #2 will likely be reversed and vacated. See Appendix, page 9.

The new order graphically illustrates the bias of this individual judge searching thousands cases I have filed for various entities, (it took him five months to

search my record and write the new order) desperately trying to find another bankruptcy sanction, which he could not find, and ultimately finding two other cases in which I was sanctioned (one ten years ago), neither of which resulted in the severe act of suspension.

The fact remains, and the respondent admits, my suspension from the practice of law is based on an order found to have violated due process.

No attorney disciplinary charge can be based upon orders that violate due process, or the First Amendment and Equal Protection.

Bernstein #2 selectively quotes the Hon. Charles Brieant, United States District Court Judge, who determined, as an Appellate Judge from Berstein #1 that my actions were "**not** facts which reflect a great moral laps [sic] on the part of Attorney Klein."

Acting as Appellate Judge, United States District Court Judge Charles Brieant stated:

> "The appellant is an attorney who actively practices in this district and is well and favorably known to the Court. He is an attorney of diligence and good reputation and highly regarded.
>
> "The Court understands that sanctions occasionally are imposed as part of the efforts of courts to maintain the proper conduct of proceedings and I do not think that the facts set forth in this case reflect a great moral laps[e] on the part

of Attorney Klein."
see Appendix page 18

A complete copy of the transcript before the Judge Brieant is included in this appendix at page 14. A federal district court has further determined that the conduct complained of should not be the subject of discipline. See Appendix, page 13.

This is precisely why this Writ must be granted. A state court system, which has little knowledge or experience with bankruptcy court matters or Federal Civil Rights determined that I am to be suspended for five years based upon their misperception of bankruptcy law and the Federal Constitution. The Federal Courts, which do have extensive knowledge and experience have determined that I should not be suspended, at least in the New York Federal Courts, and that I can continue to practice law in those Federal Courts. See Appendix, page 13. The Federal Courts realized no attorney disciplinary charge can be based upon orders that violate due process, the First Amendment or Equal Protection.

Conspicuously absent from the opposition submitted by Respondent, is any case law argument regarding the violation of Equal Protection and First Amendment.

No agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or

denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State." Ex parte Virginia, 100 U.S. 339, 346-47 (1880).

My suspension was also based upon an order which sanctioned me for insisting on my First Amendment Right to practice my religion by bringing a motion to arbitrate before a Rabbinical Court.[1] The Plaintiff in that case himself voluntarily dismissed the action, consistent with my motion, to his local Rabbinical Court of his choice.

Also, conspicuously absent from the Respondent's brief is any substantive opposition to the argument that the degree of the suspension was a violation of the Equal Protection Clause of the Constitution and requires this Courts review.

The suspension must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the suspension, so that all persons similarly circumstanced shall be treated alike." F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

Bernstein #2 has slashed the sanction to 20% of the original sanction. This further demonstrates the state court disciplinary suspension was excessive and violative of due process and equal protection and it must be remanded to the New York State Courts for a

---

[1] Article 75, Civil Practice Laws and Rules of the State of New York

re-determination; something the New York Court of Appeals was unwilling to do, as the court of last resort in New York.

The genesis of the proceeding against me did not originate from any client or judge but from a litigation adversary. It does not involve any allegation that I in any way misappropriated or co-mingled any funds, neglected any case, was convicted of any crime or any of the multiple common reasons attorneys are disciplined. The disciplinary complaint was filed by a former employee. Thereafter, David Bushman, Esq., who, acted as that former employee's counsel and now offices with her, brought an action against me (which was dismissed) and filed a separate grievance (the "Bushman Grievance") against me on behalf of Eliezer Goldstock ("Goldstock").[2] Goldstock was then prosecuting a malpractice lawsuit against me.[3]

The suspension is the result of a vindictive adversary, and should not rise to a suspension for the conduct alleged. The suspension is excessive, especially when contrasted against other conduct by attorneys leading to censure or sanctions and not suspension.

---

2. The Bushman Grievance not only discussed the Goldstock litigation, but also the former employee litigation.

3. Upon the consent of Goldstock, the malpractice litigation was dismissed with prejudice in favor of arbitration through Goldstock's own rabbinical court. Goldstock has dropped the matter in all forums. Although the Respondent refers to him as "Dr. Goldstock" he is not a medical doctor, but instead has a mail-order "Doctoral" degree from a mail order study program.

All Procedural Remedies Were Exhausted

This petition originated from the highest court in New York, the New York Court of Appeals. The New York Court of Appeals denied my motion to reargue a motion to grant review of the suspension, after the United States Court of Appeals for the Second Circuit vacated Berstein #1 (a basis of the suspension). Respondent's suggestion that I exhaust my procedural remedies in a lower court defies logic.

This petition should be granted. The violation of due process, the violation of my right to practice my religion, the inconsistency of the penalty applied and finally my ability to support my family require this Petition be granted.

No suspension of the length imposed upon your petitioner can be found in any reporter for the conduct alleged. The arbitrary sentence has no fair of substantial relation to the object of discipline so that all persons are treated alike.

CONCLUSION

The Supreme Court is my last hope for upholding my Constitutional rights. I pray the Court will grant my Petition for Writ of Certiorari.

Dated: June 9, 1998
Spring Valley, NY

Respectfully,

Shmuel Klein, pro se
268 Route 59 West
Spring Valley, NY 10950
(914) 425-2682

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
COUNTY OF ROCKLAND)

I, Asmaa Suqi, affirms under the penalties of perjury pursuant that I am not a party to this action and that I am over the age of 18 years old. I have an office at 268 Route 59, Spring Valley, New York 10977, and I served the within Petition for Writ of Certiorari and Appendix on June 10, 1998, by depositing a three copies thereof in a post-paid wrapper, placing it in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, overnight mail, addressed to:

Gloria A. Bunze
399 Knollwood Road, Suite 200
White Plains, NY 10603

Asmaa Suqi

Affirmed and subscribed to
before me June 10, 1998

Notary

ANDREA KLEIN
Notary Public, State of New York
No. 01KL5085025
Qualified in Rockland County
Commission Expires September 15, 1999

APPENDIX

NOTICE OF APPEAL OF BERNSTEIN DECISION
IN RE: MOSES STEIN

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In Re: Case No. 94-20708(SMB)

MOSES STEIN

Debtor Chapter 13

----------X

NOTICE OF APPEAL

Shmuel Klein, Appellant pro se, appeals to the United States District Court for the Southern District of New York form an order of the United States Bankruptcy Court, Southern District entered in this case docketed May 11, 1998 and entered thereon.

The parties to the order appealed form and the names and addresses of their respective attorneys are as follows:

Ulster Savings Bank by
Law Office of Howard C. St. John
280 Wall PO Box 4380
Kingston, NY 12402

Shmuel Klein, pro se and Moses Stein
268 West Route 59
Spring Valley, NY 10977

Dated: May 15, 1998
Spring Valley, NY 10977

_____
Shmuel Klein
268 West Route 59
Spring Valley, NY 10977

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK:

----------x

IN RE:
MOSES STEIN Case No. 94 20708(SMB)
Debtor Chapter 13

----------x

APPELLANT'S DESIGNATION OF RECORD AND STATEMENT OF ISSUES PURSUANT TO BANKRUPTCY RULE 8006

Appellant having filed a notice of appeal on May 15, 1998 from an order of the bankruptcy court dated May 11, 1998, hereby designates the following for inclusion in the record on appeal and sets forth a statement of issues to be presented on appeal:

Designation of Contents of Record

1. Copy of Remand of the United States Court of Appeals filed October 20, 1997.

2. Copy of Remand of the United States District Court dated November 17, 1997.

3. Copy of Order of the United States Bankruptcy Court (Honorable Stuart M. Bernstein) entered on November 19, 1997.

4. Copy of File in the above captioned case dated after November 19, 1997

5. Copy of Memorandum Decision and Order Imposing Sanctions Against Shmuel Klein,

United States Bankruptcy Court (Honorable Stuart Bernstein, docketed May 11, 1998.

Issues Presented

1. Whether a remanded case should be heard by a Judge assigned to a division different from that required by the local rules of the Bankruptcy Court for the Southern District of New York?

2. Whether Judge Stuart Bernstein should recuse himself from hearing this case?

3. Whether the Judge Stuart Bernstein could be fair and impartial, having previously recused himself in other cases involving appellant?

4. Whether a sanction is error and or an abuse of discretion under the current circumstances?

5. How long may a Judge take in deciding an decision?

6. To what extent may a Judge defend himself in a decision?

Dated: May 15, 1998
Spring Valley, NY

Shmuel Klein
268 Route 59
Spring Valley, NY 10977
(914) 425-2510

FEDERAL COURT DECISION NO ACTION AT THIS TIME

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007

CHAMBERS OF ROBERT P. PATTERSON, JR.
DISTRICT JUDGE

December 5, 1997

Shmuel Klein
268 Route 59 West
Spring Valley, NY 10977

RE: In the Matter of Shmuel Klein
M-2-238

Dear Mr. Klein:

After careful review of the papers you have submitted to the Court, the Grievance Committee for the Southern District of New York has determined to take no action at this time in the above referenced matter.

Sincerely,

Robert P. Patterson, Jr. U.S.D.C.J.
Chair, Grievance Committee

TRANSCRIPT OF HEARING BEFORE
JUDGE BRIEANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

MOSES STEIN, SHMUEL KLEIN
Plaintiffs

-against- 96 CIV 06640 (CLB)

ULSTER SAVINGS BANK
Defendant

----------x

US Courthouse
White Plains, NY
October 25, 1996
12:30 p.m.

Before: Hon. Charles L. Brieant
U.S. District Judge

Appearances:

For the Plaintiffs: Shmuel Klein, Esq.

Sue Ghorayeb, R.P.R., C.S.R.
Court Reporter

THE CLERK: Moses Stein, Shmuel Klein versus Ulster Savings Bank.

THE COURT: Mr. Klein, I realize you have been waiting a long time. I regret that we have been running a little bit behind.

MR. KLEIN: Good morning, your Honor.

THE COURT: Would you take half of it and go home?

MR. KLEIN: Excuse me, your Honor. I am sorry. I didn't hear your Honor.

THE COURT: You have a motion here for refund of $2500.00?

MR. KLEIN: I actually compromised $3,500 by making a real good faith effort to settle everything. I mean this case is a done case. Stein has his house back, Ulster has their money, and the only issue is my good name, for which I won't say is worth much, but at least the sanction was wrong, Judge. I shouldn't have been sanctioned at all for this case. Judge Bernstein was a new judge. The Bankruptcy Court was in a real chaos.

THE COURT: I kind of asked you a question. You paid $2500 to the clerk?

MR. KLEIN: Yes, sir.

THE COURT: You want to get it back?

MR. KLEIN: Yes, sir. I think the sanction should be reversed.

THE COURT: Would you take $1,250 and run?

MR. KLEIN: If the sanction would be reversed, absolutely.

THE COURT: No, I can't reverse the sanction, but I may construe it to be an imposition of cost for unduly delaying and extending the litigation. I don't really feel that your good name is at stake.

MR. KLEIN: It is, Judge, because this thing has been turned over to the disciplinary committee and it's wrong.

THE COURT: What did the disciplinary committee do?

MR. KLEIN: They are still waiting for this appeal.

THE COURT: Because, you see, it's a somewhat convoluted set of facts here and --

MR. KLEIN: Because --

THE COURT: -- it really is so that you can't file a new petition under these circumstances.

What you had to do was to appeal the dismissal or move for re-argument on the dismissal, and the filing of the new petition is a violation, whether it's a good faith violation or not, or how serious a violation it is as things turned out I think is another question.

If you want to argue it and have me decide it, I am prepared to do that. I was thinking of yourself and I was thing of the fact that our resources are not infinite.

MR. KLEIN: Judge, I don't think it at all was a violation at all. I do a lot of bankruptcy, a lot of bankruptcy, and I will tell you that I have refiled within a 180 days after dismissal by trustee regularly.

THE COURT: But you did fail to disclose to the petitioner that there was a dismissal.

MR. KLEIN: That as I admitted in the record before Judge Bernstein was a clerical error, because we basically took the same petition and refiled it.

THE COURT: Well --

MR. KLEIN: And that I don't believe --

THE COURT: Whether it was a clerical error or whether it's sanctionable misconduct I think is certainly a close question, so you tell me what you want

to do. Do you want to have the Court simply decide on your papers or do you want to cut your losses and get out of here?

MR. KLEIN: I have got to reverse it, Judge, and I will take it up to the Supreme Court if I have to.

THE COURT: Very well, sir. Is there anything else you want to say? Because I have studied your papers. I am prepared to make my findings.

MR. KLEIN: Judge, I don't believe the conduct that I did rose to sanctionable conduct.

THE COURT: Well --

MR. KLEIN: The fact that the case was dismissed was severe enough; the fact that I paid even costs for Ulster Savings Bank was enough, but to say that I did something that was sanctionable, Judge Bernstein is wrong. He is wrong according to all the cases cited, even his own cases cited, which I can distinguish one after the other. Cappellardo, four filings, Judge, and no payments made. Stein, one was the second filing and he made his payments in the first petition and in the second petition.

THE COURT: All right. Why don't you be seated and I will decide your motion. I have studied it and considered it.

The Court makes the following decision in connection with this appeal:

This is an appeal by Attorney Shmuel Klein from an order of the United States Bankruptcy Court, Judge Stuart Bernstein, dated June 8th, 1994, and the appellant appeals from that portion of the Bankruptcy Court's order which imposed sanctions against him totaling the sum of $2,500. The sanctions have been paid. Certain other issues arising out of the case resulted in other costs and sanctions being imposed, and those have been resolved, so that they are no

longer before this Court for consideration. The appellant is an attorney who actively practices in this district and is well and favorably known to the Court. He is an attorney of diligence and good reputation and highly regarded.

The Court understands that sanctions occasionally are imposed as part of the efforts of courts to maintain the proper conduct of proceedings and I do not think that the fact set forth in this case reflect a great moral laps on the part of Attorney Klein. However, the Court will now set forth what it understands to the facts and will consider the conduct of Judge Bernstein as to whether it warrants reversal.

The appellant was an attorney representing a debtor by the name of Moses Stein. On November 15th, 1993, Mr. Stein filed a Chapter 13 petition. The incentive for doing so is because a foreclosure sale of his residence by Ulster Savings Bank (hereinafter referred to as the bank) was imminent, and that foreclosure was automatically stayed under Title 11 of the United States Code Section 362.

On March 10th, 1994, the bank moved to have the stay lifted on the grounds that Mr. Stein, the debtor, had not made any post-petition payments on his mortgage loan. On March 15th, 1994, Judge Berntein of the Bankruptcy Court lifted the stay, holding that the bank had demonstrated prima facie that payments pos-petition had not been made.

On March 17th, 1994, Mr. Stein and his attorney failed to appear at a Section 341 meeting with the Bankruptcy Trustee, Jeffrey Sapir, and United States Bankruptcy Judge Jeffrey Gallet.

I might note parenthetically that during a vacancy created by the untimely death of the Honorable Howard Schwartzberg of this court, various

Bankruptcy judges ordinarily stationed in Manhattan were taking turns covering the calendar here.

Because of the failure of the debtor to appear, the trustee, Mr. Sapir, moved to have the petition dismissed for failure to attend, failure to prosecute.

On March 31st, 1994, a motion to reargue the relief from the Bankruptcy stay was made before Judge Bernstein and reargument was granted, and the Bankruptcy Court, by Judge Berntein, heard reargument on April 6, 1994.

At the reargument, the debtor, Stein, produced copies of three checks, and the appellant contended on behalf of his client that these copies constituted proof that the post-petition mortgage payments had in fact been made. The bank conceded that it had been in possession of the checks, but contended that it was not aware of this fact when it made its original motion for a lift of the stay. The bank contended that it had not known that it had receive the checks on March 10th, 1994, because the checks were contained in a sealed self-addressed, stamped envelope, that was mixed among a pile of documents sent to Ulster Savings Bank apparently by the attorney's office or by the debtor.

The Bankruptcy Court through Judge Bernstein held that it would reimpose the stay if the debtor would pay Ulster in full within one week. The Bankruptcy Courts also concluded that the checks were originally misplaced in a sealed, self-addressed, stamped envelope as a result of malfeasance by Attorney Klein and imposed $500 on Attorney Klein as a sanction for that malfeasance. It turned out that at no time prior to, during, or after the reargument of Ulster's motion, did the attorney inform Judge Bernstein that a motion to dismiss the petition was pending before Judge Gallet.

On April 7th, 1996, unbeknownst to Judge Bernstein, apparently Judge Gallet granted the Bankruptcy Trustee's motion to dismiss Mr. Stein's petition on the grounds that he had failed to appear the Section 341 meeting.

On April 26, 1994, the debtor, acting through Attorney Klein, filed a second Chapter 13 Bankruptcy petition. The petition was affirmed and singed by the appellant, and that petition on its face violated Title 11 of the United States Code Section a 109 Subparagraph 9(g)(1), because it had been filed within 180 days of the dismissal of the prior petition and it did not say so. The petition, which was signed by the appellant, falsely represented that the debtor had not filed a previous Bankruptcy petition in any of the prior six years. The bank moved for relief from the stay imposed by the filing the second petition or alternatively for dismissal of the petition.

On June 8th, 1994, the Bankruptcy Court again acting through Judge Bernstein dismissed Stein's second petition. The Bankruptcy Court held that the second petition was filed to deliberately frustrate the rights of the bank and was indicative of a pattern of abuse of process by the debtor, in which the appellant had been a participant, and Judge Bernstein characterized the activity as something which "made a mockery of the prior proceedings and orders which this court has issued."

The Court then charged the attorney and the client with various malfeasance in connection with the proceedings concerning Mr. Stein, including the placing of the mortgage payment checks is a sealed, self-addressed envelope, and burying the envelope in a pile of papers; failure to appear at the Section 341 proceedings at the first petition; wasting the time and

judicial resources of the court by failing to inform Judge Bernstein, prior to the reargument of Ulster's motion for relief from stay, of the pending motion by the trustee to dismiss the first petition which was awaiting decision by Judge Gallet; failure of the attorney and client to appear in response to the trustee's motion to dismiss before Judge Gallet; the filing of a second petition in violation of Section 109 of Title 11, and the false representation in the second petition that debtor Stein had not filed for relief under the Bankruptcy Code in the previous six years.

Based on the totality of that conduct, Judge Bernstein imposed sanctions on the appellant, action pursuant to Rule 90111 of the Federal Rules of Bankruptcy Procedure. These sanctions include $2500 to be paid to the clerk for abuse of process, an extra cost imposed upon the court, and a thousand dollars to the bank to cover the cost of the bank's legal fees in answering the frivolous motions and improper second filing.

Subsequent to Judge Bernstein's decision to dismiss the petition and impose sanctions, the bank and the debtor reached a settlement which has been executed and performed. The appellant and the bank have entered into an agreement whereby the appellant has agreed not to seek recovery of the fines he was required to pay to the bank or sanctions. So it turns out now that the appellant is only seeking to recover $2500, which he was ordered to pay to the Clerk of the Court and which he has in effect paid, and consequently, the bank is not appearing in opposition to this appeal and there is nobody appearing here to protect the interests of the Clerk of the Court or the federal treasury.

The Court concludes that under Rule 9011 of the Federal Rules of Bankruptcy Procedure the activity would have constituted an abuse of the Bankruptcy process by parties and attorneys, within the meaning of the Mid-Tech Consulting case, cited through the Eighth Circuit.

And the Court finds that the second petition was an act -- the filing of which constituted a violation of Rule 9011. That rules addresses itself to two types of sanctionable conduct. First, whether the petition is frivolous or legally unreasonable or without factual foundation; and, second, where the pleading is filed for an improper purpose. Sanctions are said to be mandatory, although, nothing is ever mandatory for an Article 3 Judge.

Whether or not a violation has occurred is determined from the record within the court's discretion, and the standard to be applied is the objective reasonableness of the filing under all of the circumstances. Subjective good faith may be a factor which would enter into the amount of the sanction, but it cannot excuse conduct or activity which violates Rule 9011.

So the Court has to assess, first, whether the questions of fact regarding the prefiling inquiry and the factual basis of the filing have been attended to; and, second, whether the filing was warranted by existing law or by a good faith argument for changing the law, and then the Court has to fashion an appropriate sanction in compliance with the Cooter & Gell case of the Supreme Court.

Now, as I said, Rule 9011 closely tracks Rule 11 of the Federal Rules of Civil Procedure; however, Rule 11, as amended in 1993, requires the District Court to convene a hearing prior to imposing sanctions against a

party or an attorney. For that reasons, the appellant argues that Judge Bernstein erred in imposing sanctions against him without holding a hearing. However, this Court notes that while Congress amended Rule 11 in 1993, it did not amend Rule 9011, and under Rule 9011 of the Bankruptcy rules there is no requirement that a court hold a hearing before imposing Rule 9011 sanctions.

The record is clear that the appellant filed the second Bankruptcy petition with the knowledge that such a petition violated Title 11 Section 109(g)(1), and he endorsed the filing of the pleading in spite of the fact that the pleading falsely stated that he debtor Stein had not file da prior petition in the previous six years. So there is no rule of law which warrant the filing of a petition.

There is no good faith argument as to why the statute should be changed or why it should not apply to the debtor's second filing. The Court concludes that the proper procedure to have adopted would have been to move for reargument before Judge Gallet or to have taken an appeal from Judge Gallet's dismissal and sought a stay pending appeal from the District Court.

The Court does not believe that this violation by the attorney was something that obstructed the foundation of the Republic, but the Court does believe that there was no objective good faith basis for filing the second petition in the way that it was done and with the content that it contained, and the Court finds that the Bankruptcy Judge did not exceed his authority or abuse his discretion in imposing the sanction. And while the Court recognizes the persons might disagree and that the explanations offered at this point might have been accepted by the Bankruptcy Judge, perhaps the amount of the fine might have been less, but

essentially, on the totality of the record before me, I find no violation of due process and I find no abuse of discretion either in the imposition of the sanctions or in the amount of the sanctions which were imposed by Judge Berstein in this case.

The Court noted in the papers a suggestion that, ordinarily, recognizing difficulties in travel, attorney who like Mr. Klein come from across the river where there is very poor service on the bridge at the time the courts convene, and traffic is often delayed, and, ordinarily, wher Judge Schwartzberg ran the court he would have allowed for a second call or even heard people the next day when they failed to show up, but that's not binding on Judge Berstein and there is no showing that the debtor or the attorney actually was available for a second call before Judge Gallet.

So the foregoing constitutes my decision in connection with this appeal to the extend appealed from. The decision and order of the Bankruptcy Judge is affirmed. The Court understand Mr. Klein that you wish to have a full record here, and if there is some topic or issue which the Court has not dealt with adequately for your purposes, you can make a request on the record right now for me to amplify my holding, it that's what you wish.

MR. KLEIN: Thank you, your Honor.

I would request -- excuse me, your Honor -- that you reconsider the determination. In fact, at Judge Gallet's -- the day that Judge Gallet dismissed the case I did appear with the debtor and Ulster also appeared late. We all appeared late, we all looked at each other, and Judge Gallet had dismissed the case. We asked Judge Gallet, "Would you rehear it?" He said basically, "Refile." Because debtors do not have a lot of money to go through appeals, debtors don't have a lot of

money to go for motions to reargue, it's less expensive to pay another filing fee of $160, and I didn't charge him to refile the petition again.

THE COURT: What did Judge Gallet say to you?

MR. KLEIN: He basically said, "Go refile again if you need to."

THE COURT: Was that in the transcript?

MR. KLEIN: There was no transcript. This is off-the-record again. This is after the proceedings.

THE COURT: You see, I could -- accepting that as true, which I am prepared to do on your word alone, it seems to me that does not justify filing a petition which has a false allegation.

If the allegation in the petition had been that this was dismissed through inadvertence and we apply for reargument to the Bankruptcy Judge Gallet, he said, "Why don't you just refile," that would have been a different picture presented to Judge Bernstein. I think that while the record will indicate that the contention on your part, that does not alter the outcome.

MR. KLEIN: Judge Bernstein never heard that. The chaos in the Bankruptcy Court of having two judges hear one case and having two separate kinds of rules was terrible.

THE COURT: I appreciate the concern which you have.

MR. KLEIN: But --

THE COURT: You have received the outcome here. I do not believe it is appropriate for me to reverse the decision.

As I said earlier, while I think it's a sanctionable event, I don't think that the level of misconduct is quite so serious as you yourself seem to feel that it's being

perceived, and as far as I am concerned, you can take the transcript to the disciplinary authorities if you wish and you can present the entire matter there if you have to do so, by the Court is affirming the order appealed from.

Thank you sir.

MR. KLEIN: Thank you, your Honor.

THE COURT: Court will be in recess.

(Case concluded)